THE HIGH COURT OF SIKKIM : GANGTOK

Writ Petition (C) No. 06 of 2007

1. Bishnu Neopaney,
Son of Shri Pursu Ram Neopaney,
Lingdok Nechu Busty,
P.O. and O.P. Lingdok, 8th Mile,
East Sikkim.
Presently residing at Tadong, Dara Gaon,
P.O. and O.P. Tadong,
East Sikkim. ... **Petitioner.**

-Versus-

1. State of Sikkim
Through the Chief Secretary,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim.

2. Additional Chief Secretary-cum-Principal Secretary,
Finance, Revenue and Expenditure,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim.

3. Principal Secretary,
Department of Personnel, Administrative Reforms & Training, Public Grievances, Career Options & Employment, Skill Development and Chief Minister's Self Employment Scheme,
Tashiling Secretariat,
Gangtok, Sikkim.

4. Special Secretary,
Department of Personnel, Administrative Reforms & Training, Public Grievances, Career Options & Employment, Skill Development and Chief Minister's Self Employment Scheme,
Tashiling Secretariat,
Gangtok, Sikkim.

5. Deputy Secretary,
Department of Personnel, Administrative Reforms & Training, Public Grievances, Career Options & Employment, Skill Development and Chief Minister's Self Employment Scheme,
Tashiling Secretariat,
Gangtok, Sikkim.

6. Public Information Officer,
Home Department,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim.

7. Shri M. L. Nagar,
Deputy Resident Commission,
Sikkim House,
14, Panchaseel Marg,
New Delhi.

8. Shri B. K. Pradhan,
Additional Controller,
Weights and Measures, Food and Civil Supplies and Consumer Affairs Department,
Government of Sikkim, Gangtok.

9. Shri R. S. Basnet,
Principal Secretary to the Chief Minister,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim. ... **Respondents.**

For the Petitioner : Mr. Bishnu Neopaney, petitioner in person.

For the Respondents : Mr. S.P. Wangdi, Advocate General with Mr. J.B. Pradhan, Govt. Advocate for the State-Respondents.

PRESENT: HON'BLE MR. JUSTICE AJOY NATH RAY, CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE N. SURJAMANI SINGH, JUDGE

DATE OF JUDGMENT : 28th MARCH, 2007.

JUDGMENT AND ORDER

The Court:-

1. Upon hearing Mr. Bishnu Neopaney, the writ petitioner herein and Mr. S.P. Wangdi, learned Advocate General assisted by Mr. J.B. Pradhan, learned Govt. Advocate for the State and on perusal of the available materials on record, we are of the view that this matter can be disposed of at this motion stage considering the nature of the case and, accordingly, it is disposed of with the following judgment and order:-

2. According to the petitioner, he is a Journalist who approached this Court for ventilating the grievances of the unemployed youths of the State and for declaring the appointment of the private respondent Nos.7, 8 and 9 as illegal and void and violaltive of the mandates of the Constitution laid down under relevant provisions of Article 14 and 16 of the Constitution of India by contending, inter-alia, that re-employment of the serving or retired Govt. employees/officers caused injustice to all concerned in the matter of appointment. The petitioner while supporting his case argued that many unemployed youths have been facing hardship for want of employment and the method of the employment or re-employment given to the retired persons like Respondent Nos.7, 8 and 9 defeats the mandates of the Constitution in the matter of appointment as their re-employment is wholly unconstitutional and illegal. In view of it, the petitioner filed this writ petition in the form of Public Interest Litigation.

3. According to Mr. Wangdi, the learned Advocate General, this writ petition is unsustainable and that the same is politically motivated one in as much as re-employment or re-appointment is generally done in the higher services/posts and, the post(s) even lying vacant for such higher cadre of services, the same cannot be filled up by fresh un-employed youths. It is also submitted by the learned Advocate General that method of re-employment in such post or posts falls outside of the cadre of fresh and

direct appointment and no aggrieved person or persons, if any, came forward questioning the method of re-employment or re-appointment and, this writ petition was filed by the petitioner in individual capacity and that being the position it is not a Public Interest Litigation and apart from it, the petitioner did not act bonafidely in filing this writ petition.

4. For better appreciation in the matter of controversy and for just determination of such issue we require to recall the provisions of Rule 102 of the Sikkim Government Service Rules, 1974 which is relevant in the case in hand and that the same is quoted below:-

> "102. A Government Servant, who is retired according to the provisions of rule 98, may be re-employed by the Government if it is satisfied that such employment is definitely in the interest of the Government and that the Government Servant is physically and mentally fit. The period for re-employment shall be determined by the Government:
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> Provided that the pay fixed plus the retiring pension shall not, on the day of re-employment, exceed the pay last drawn by the Government Servant before retirement, and also that the pay plus the retiring pension shall not, at any time, exceed the maximum of the pay scale of the post held by him during the period of re-employment."

5. Thus it is clear that Rule 102 enables the Government to re-employ a retired person if it is satisfied that such employment is definitely in the interest of the Government. Apart from this, certain conditions also have been laid down under this Rule of 102 about the eligibility criteria of the Government Servant for re-employment. It is made clear that the writ petitioner did not question the validity of the said Rule of 102 of Sikkim Government Service Rules, 1974 in this writ petition, which have been in force since a pretty long time. According to us, the power of jurisdiction for re-employment vests upon the wisdom and domain of the competent authority by virtue of the said Rule and as such the re-employment of Respondent Nos.7, 8 and 9 is valid in the eye of law.

6. It is always cautioned that this Court take care to see that it does not overstep the limitations of its judicial functions and trespass into the areas which are reserved to the Executive and Legislature by the Constitution and the Court generally do not allow its process to gain political advantage. In the case in hand, there is no material to establish the factum of public wrong or, injury. Hence, this Court cannot treat the present Writ Petition as Public Interest Litigation.

7. For the reasons, discussions and observations made above, we are of the view that this writ petition is devoid of merit and, accordingly, it is dismissed but no order as to costs.

(Ajoy Nath Ray, CJ)

(N.S. Singh, J.)